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Office of the
**First Minister and
Deputy First Minister**
www.ofmdfmni.gov.uk

Mr Ian Silvera
ian@muckraker.me

Your Ref:

Our Ref: FOI 2013-0056

Date: 30 April 2013

Dear Mr Silvera

Freedom of Information Act 2000

I refer to your request which we received on 27 April 2013 for information relating to the Defamation Bill.

I am writing to confirm that OFMDFM has now completed its consideration of your request and wishes to advise you that this information cannot be disclosed.

The information you requested is being withheld as it falls under the terms of the exemption in section 35 (1) (a) of the Freedom of Information Act as it relates to formulation and development of government policy; and Section 35 (1) (b) of the FOI Act as it relates to Ministerial communications.

In applying this exemption, we have had to balance the public interest in withholding this information against the public interest in disclosing it. The factors we considered when deciding where the public interest lay are explained below.

Arguments in favour of disclosing the information

There is a presumption of a general public interest in disclosure.

Disclosure may increase the public's understanding of the issues being discussed at Ministerial level.

Arguments in favour of withholding the information

Cabinet government, and the confidential nature of Cabinet proceedings, is an important and central tenet of the United Kingdom's constitution. There is therefore a

strong public interest in maintaining and protecting the principle of collective Cabinet/Ministerial responsibility.

The convention of collective responsibility allows for the maintenance of space to formulate, develop and refine policy. It facilitates the consideration of a potentially wide range of options, including the discussion and consultation process involved in developing definitive Executive policy positions. It is essential that Ministers have the space and ability to engage with each other to discuss various issues as they arise.

The release of information which could undermine the principle of collective Ministerial responsibility, or the ability of Ministers to represent their views and departmental interests with frankness and candour, would therefore not be in the public interest. This would have a detrimental effect on both the process of collective government and the quality of decisions made at the highest level, which would serve only to undermine good government.

Balancing the public interest

The need to protect the space for Ministers to discuss issues (i.e. the formulation or development of government policy and Ministerial communications) candidly and free from the risk of early disclosure of their views is recognised by the provision of these exemptions under section 35 of the Freedom of Information Act.

These are key considerations when carrying out the public interest test and substantial weight is given to these considerations when balancing the public interest.

After weighing the various factors in favour of disclosing and withholding the information, on balance we believe that it is not in the public interest to disclose information relating to all material which refers to the Defamation Bill. It is therefore the view of the Department that under section 35(1) (a) and (b) of the Freedom of Information Act, the arguments in favour of non-disclosure of this information outweigh the arguments in favour of disclosure

If you are unhappy with the level of service you have received in relation to our handling of this request, you may ask for an internal review within two calendar months of the date of this letter. You should contact –

Director of Corporate Services
Room E5.24
Castle Buildings
Stormont Estate
BELFAST
BT4 3SR

Tel - 028 9052 0694
Email - foi@ofmdfmni.gov.uk

If you are not content with the outcome of the internal review, you then have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at –

Information Commissioner's Office
Wycliffe House
Water Lane
WILMSLOW
Cheshire
SK9 5AF

The Information Commissioner will not investigate a complaint unless the internal review procedure outlined above has been completed.

Please contact me if you have any queries about this letter, remembering to quote the reference number above in any future communications.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JH' followed by a horizontal line.

Jeremy Gardner

